

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JERRY BROWN,

Plaintiff,

ILLINOIS WASTE MANAGEMENT  
And RESEARCH CENTER, a division of  
The Illinois Department of Natural  
Resources, a Department of the State of  
Illinois, TIMOTHY LINDSEY, KATIE DAY  
And GEORGE VANDER VELDE,

Defendants.

Case No. 07 C 7080

Honorable James B. Zagel

Magistrate Judge Valdez

## **DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendants, the Illinois Waste Management and Research Center, a division of the Illinois Department of Natural Resources, a Department of the State of Illinois, Timothy Lindsey, Katie Day and George Vander Velde, (“Defendants”), by and through their attorney, Illinois Attorney General Lisa Madigan, hereby move to dismiss in its entirety Plaintiff’s Complaint at Law pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). In support of their Motion, Defendants state as follows:

1. Plaintiff, Jerry Brown, filed his Complaint against Defendants on or about December 17, 2007, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et. seq.*, as amended by the Civil Rights Act of 1991 (Title VII), for discrimination and retaliation based on Plaintiff's race, national origin, and ancestry.

2. First, Plaintiff's claims against Defendants Timothy Lindsey, Katie Day and George Vander Velde should be dismissed because they are not subject to individual liability under Title

VII.

3. Second, Plaintiff's claim that Defendant discriminated or retaliated against him by allegedly "repeatedly downgrading [his] performance evaluation" should be dismissed because this claim does not rise to the level of an adverse employment action.

4. Third, Plaintiff's claim that Defendant discriminated or retaliated against him by allegedly "repeatedly failing to pay [him] in line with other non-Black employees" should be dismissed because he does not allege any discrete action that occurred within 300 days of filing his EEOC charge of discrimination, dated July 12, 2007.

5. Fourth, Plaintiff's claim of unequal pay is duplicative of claims in his previous lawsuits and is barred by the doctrine of *res judicata*, or claim preclusion.

6. Fifth, in his EEOC charge, Plaintiff failed to allege discrimination based on his ancestry or national origin, and his allegations premised on those bases should be dismissed.

7. Finally, Plaintiff failed to sue the proper Defendant, as the Waste Management and Research Center, ("WMRC"), is a division of the Illinois Department of Natural Resources, ("IDNR"), and WMRC is not a suable entity.

In support of this Motion, Defendant submits the attached Memorandum of Law in Support of its Motion to Dismiss Plaintiff's Complaint, which is hereby incorporated in this Motion as if fully stated herein.

**WHEREFORE**, Defendants, the Illinois Waste Management and Research Center, a division of the Illinois Department of Natural Resources, a Department of the State of Illinois, Timothy Lindsey, Katie Day and George Vander Velde, respectfully request that this Court grant their Motion to Dismiss Plaintiff's Complaint with prejudice, and for further relief this Court deems just and proper.

LISA MADIGAN  
Illinois Attorney General

Respectfully submitted,

**ILLINOIS WASTE MANAGEMENT AND  
RESEARCH CENTER, a division of the Illinois  
Department of Natural Resources, a Department  
Of the State of Illinois, TIMOTHY LINDSEY, KATIE  
DAY and GEORGE VANDER VELDE,**

By: s/ Mary M. Madden  
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